

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

FENG ZHAO)	PETITION FOR WRIT OF MANDAMUS
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Petitioner)	
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v.)	
)	
CHAD WOLF, in his official capacity as Acting Secretary of the U.S. Department of Homeland Security; KENNETH CUCCINELLI in his official capacity as Acting Director, US Citizenship and Immigration Services; TIM HOUGHTON, in his official capacity as Director, USCIS New York City District Office)	
)	
Respondents)	
)	

Docket No. 1:20-cv-2163

PETITION FOR A WRIT OF MANDAMUS

1. Petitioner hereby petition for a writ of mandamus to the United States Department of Homeland Security ("DHS"), US Citizenship and Immigration Services ("USCIS), and its subordinating application processing center to compel further action on plaintiff's Form I-730, Petition for Refugee/Asylee Relative Status.

JURISDICTION

2. This action arises under the United States Constitution and the statutes of the United States. This Court has jurisdiction over this action under 28 U.S.C. §1331 (federal question).

3. The Court has authority to issue declaratory and injunctive relief under 28 U.S.C.

§ 2201 and 2202, Rules 57 and 65 of the Federal Rules of Civil Procedure, and its inherent equitable powers.

4. Venue is proper in this district under 28 U.S.C. § 1391 (e)(3).

PARTIES

5. Petitioner is a citizen of China who was granted asylum status by an immigration judge on May 17, 2017, and whose adjust has since been adjusted to that of a lawful permanent resident.

6. Respondent Chad Wolf is sued in his official capacity as Acting Secretary of Department of Homeland Security ("DHS"). As Acting Secretary of DHS, Mr. Wolf is responsible for the administration and enforcement of the immigration laws of the United States.

7. Respondent Kenneth Cuccinelli is sued in his official capacity as Director of the United States Department of Homeland Security, United States Citizenship and Immigration Services ("USCIS"). As Director of USCIS, Mr. Cuccinelli is responsible for overall administration of USCIS and the implementation of the immigration laws of the United States.

8. Respondent Tim Houghton is sued in his official capacity as Director of the USCIS New York City District Office. As Director of the New York City District Office, Mr. Houghton is responsible for the administration and adjudication of all immigration petitions and applications falling within its territorial jurisdiction.

STATEMENT OF FACTS

9. Petitioner Feng Zhao (alien registration number A206 063 228) is a citizen of

China and lawful resident in the United States.

10. Petitioner filed a Form I-730, Petition For Refugee/Asylee to USCIS on behalf of her spouse Xin Jiang on June 20, 2017, pursuant to section 209 of the Immigration and Nationality Act. The receipt number associated with his application is SRC1718550075.

11. As of the date of filing the instant petition for a writ of mandamus, the USCIS has not acted on the I-730 petition filed by the petitioner, even after the passage of almost three years.

**PLAINTIFF HAS EXHAUSTED ALL AVAILABLE
ADMINISTRATIVE REMEDIES**

12. Petitioner to this date has visited the USCIS local office repeatedly to inquire about the status of his petition.

13. At each visit, he was advised that her application are being processed, and that he should contact the USCIS again if nothing happened in her case within the next six months.

14. To this date petitioner Feng Zhao has waited for almost three years for a final decision on the I-730 petition filed with USCIS seeking to accord immigration benefit to her spouse.

15. Petitioner has no other administrative remedy by which she may seek the USCIS to more meaningfully address the delays in the processing of her I-730 petition.

CAUSE OF ACTION

16. Petitioner repeats and re-alleges each and every factual allegation set forth above as if they are fully alleged herein.

17. Respondents have a duty to complete adjudication of petitioner's I-485 application

within a reasonable period.

18. Under the Administrative Procedures Act, codified as 5 U.S.C. § 555(a), agencies are required to proceed with reasonable dispatch to conclude matters presented to him. Under the Administrative Procedure Act, 5 U.S.C. § 706 (a), the District Court is vested with the authority to compel agency action which has been unlawfully or unreasonably withheld or delayed.

19. The agency's own regulation provides that the processing of a case may not be withheld except in cases in which "an investigation has been undertaken involving matter relating to eligibility or the exercise of discretion, where applicable, in connection with the application or petition . . ." 8 C.F.R. §103.2 (b)(8). If a case is validly withheld, it may not be withheld for more than a year. *Id.* If a case is withheld for more than a year, the district director must review the case and may grant only two six-month extensions where appropriate. *Id.* If the investigation is not completed by the second anniversary, the case must be referred to a regional commissioner. *Id.*

20. Petitioner has a clear right to seek USCIS to afford asylee status to her spouse in the United States based on her then- status as an asylee at the time of filing. *See* section 209 of the Immigration and Nationality Act.

21. Respondents in this case have unreasonably and/or unlawfully delayed in the processing of petitioner's Form I-730 Petition for Asylee/Refugee Relative Status.

22. Respondents in particular have no legitimate reasonable ground not to finish processing petitioner's adjustment application after the passage of more than three years, where the USCIS official website on processing time for Form I-730 in the New York City area is about 23 months. *See* US CIS Processing Time Information,

available at: <https://egov.uscis.gov/processing-times>.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays the Court to:

- I. Issue a write of mandamus to compel Respondents to complete processing and adjudicating Petitioner's Form I-730 Petition without further delay.
- II. Declare that Respondents have a duty to complete processing of Petitioner's Form I-730, Petition for Asylee/Refugee petition a prompt manner without further unreasonably delay.
- III. Declare that any further delay by the Respondents in processing petitioner's immigration petition will be unlawful.
- IV. Grant such other and further relief as the Court may deem proper and just.

Respectfully submitted,

Dated: March 10, 2020
New York, NY

/s/Zhen Liang Li
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